

MINUTES

**MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION
COMMITTEE ON BUSINESS AND INDUSTRY**

Call to Order: By **CHAIRMAN JOHN HERTEL**, on January 28, 1999 at 9:00 A.M., in Room 410 Capitol.

ROLL CALL

Members Present:

Sen. John Hertel, Chairman (R)
Sen. Dale Berry (R)
Sen. Vicki Cocchiarella (D)
Sen. Bea McCarthy (D)
Sen. Glenn Roush (D)

Members Excused: Sen. Mike Sprague, Vice Chairman (R)
Sen. Fred Thomas (R)

Members Absent: None.

Staff Present: Bart Campbell, Legislative Branch
Mary Gay Wells, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 227, 1/22/1999
SB 263, 1/22/1999
SB 272, 1/25/1999
Executive Action: None

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HEARING ON SB 263

Sponsor: SENATOR RIC HOLDEN, SD 1, GLENDIVE

Proponents: REP. PAUL SLITER, HD 76, KALISPELL
Mark Baker, National Assoc. of Independent Insurers
Dean Randash, Central Parts Co.
Ken Seay, Great Falls Auto Parts Store

Opponents: Greg Van Horssen, State Farm Insurance
Jack Gregg, MT Collision Repair Specialist
Gary Harris, Auto Body Spec., Inc., Billings
Matt McDonnell, MT Collision Repair Specialist
Tom Daubert, MT Collision Repair Specialist, Lobbyist
Bruce Spiess, NAPA, Billings
Frank Cote, Deputy Insurance Commissioner
Donna Fastenau, Hanks Body Shop, Billings
Jacquelyn Ayers, MT Collision Repair Specialists
Gene Deiza, Ohs Body Shop
John Metropolis, Farmers Insurance
Keith Koch, Jax Auto Body & Paint, Inc.
Mark Brodie, Rous Auto Refinishers
Jacqueline Lenmark, American Insurance Assoc.

Opening Statement by Sponsor:

SENATOR RIC HOLDEN, SD 1, GLENDIVE. Senate Bill 263 prohibits an insurance carrier from putting after-market body parts on your new vehicle. Over the past 14 years I've been associated with the insurance industry, there have been ill feelings and bickering between the body shops, insurers, consuming public and insurance commissioners office and it needs to end. This bill would establish a compromised position which doesn't totally eliminate the use of certified after-market parts or the use of the original manufacturer's parts. An after-market part is one that isn't manufactured by the original equipment manufacturer (Ford, General Motors, Nissan, etc.) while after-market parts are the others (NAPA, K-Mart, Montgomery Ward, etc.). A lot of business interest is involved in the area of car repair because cars are not all made from original equipment manufacturers (OEM) parts because some come from other manufacturers. When there is an insurance claim at what point should an OEM part be put on and at what point is it reasonable to say an after-market part could be used without jeopardizing the quality of repair or any warranties on your vehicle? This bill is incredibly simple and plain and you will be swamped with amendments by people who will want to change the bill for particular business interests. You will have to listen carefully and try to figure out where they're coming from. I purposely made this bill to fit on one sheet of paper so as not to confuse the Committee of exact intent for this piece of legislation. It does two things:

(1) Currently, an auto insurance carrier can require after-market parts be put on the vehicle as long as they can verify the part is of like kind and quality, which is where the problem begins. An insurer's definition is not the same as that of a body shop and consumer advocates. My bill draws the line and says if your car is four years old or newer, you as a person buying insurance you will get OEM parts for your vehicle unless you choose to go with an after-market part. It's your choice. Why would we use the guideline of four years or newer? Most of the warranties on new vehicles run out between three to four years and most of the bank loans expire within the next three to four or five years. Manufacturers start to hassle consumers if after-market parts are put on vehicles still under their warranties -- they threaten to void the warranties on the vehicles. If you totally eliminate the use of after-market parts on the vehicle repair, the cost of repair becomes exceedingly high which in turn drives the premiums through the roof. Therefore, if you use OEM expensive parts on older model cars, it has an adverse effect on your premiums. Crash repair parts are defined on Page 1, Line 18 -- hoods, fenders, radiator support, cowl panel, doors, roof, rocker panel, quarter panel and trunk. This bill is so clearly stated that it only deals with major crash repair body panel parts and that is where the balance needs to be drawn.

(2) Certification of after-market parts, i.e. those that are certified by an accredited certification company and Department of Transportation and those parts which are not. Insurance carriers across the state have not had a consistent policy in this area. Some carriers use after-market parts that are not certified and others use those that are. **Senate Bill 263** clearly states on Page 1, Lines 29-30, that if an insurance carrier is going to use after-market parts for vehicle repair, that part must be certified or proved by the Department of Transportation, the Certified Auto Parts Association or another certification organization that is recognized by the Commissioner. I put that last phrase there for the future. This doesn't mean that an after-market part that isn't certified can't be used because I have also written into the bill that if the insured agrees to use one, it doesn't have to be. Again, it's the consumer that has the option. When I had the bill drafted, several mistakes were made so I have some amendments **EXHIBIT (bus22a01)**. Page 1, Line 26 -- a signature on the repair estimate was typical in the auto repair business. No work was done without the signature and the estimate itemizes the repair parts and indicates whether they are after-market or OEM. It is critical that the procedure be kept as simple as possible but we don't want it left out of the bill. Page 1, Line 18, was a drafting error -- "limited to" was left out. Page 1, Line 29, was another drafting error -- insert "or."

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Proponents' Testimony:

REP. PAUL SLITER, HD 76, Somers. I support the bill as well as the concept of the bill; in fact, I support it so much that I have a bill that is not unlike **SEN. HOLDEN'S** bill and is making its way through the House process. I suspect somewhere along the line our two bills will meet.

Mark Baker, National Association of Independent Insurers (NAII). Our member companies underwrite just over 40% of the auto policies in Montana. This issue has been discussed in the past several weeks and industry players have been meeting to try to reach a compromise. We rise in support of this bill. As it was introduced, we had some reservations about Section 2, Part 1, in terms of the consent requirements. Given **SEN. HOLDEN'S** opening remarks, we would want to look at his revision as it pertained to consent. We think that would answer our concerns; however, we would like an opportunity to comment at a later point by written testimony or whatever the Committee would prefer. NAII does stand in support of **SB 263** with reservations. [He distributed copies of **EXHIBIT (bus22a02)**].

Dean Randash, Central Parts Company, Helena. He read his written testimony **EXHIBIT (bus22a03)** and offered amendments in **EXHIBIT (bus22a04)**.

Ken Seay, Great Falls Auto. I am in the after-market business and the bill infers after-market is inferior and we object to that. Our parts are marketed by major manufacturers in the United States that also manufacture the same parts for the OEM market. Not only are they often the same product but also at times we re-engineer the parts to make them fit. We support the bill as written except for the after-market segment.

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Opponents' Testimony:

Greg Van Horssen, Start Farm Insurance. State Farm opposes **SB 263** as drafted; however, I have brought some amendments which would make the bill palatable to State Farm **EXHIBIT (bus22a05)**. It occurs to me that what brings this bill to both the House and Senate Committees is consumer information and choice. From the testimony I've heard thus far, in many cases consumers are not being informed about the use of after-market products; in fact, in many cases they may not be given a choice. I think that's what these bills are attempting to do. That's why I oppose **SB**

263 in its current form -- State Farm does those things already. It believes that all auto body repair shops in conjunction with their insurers should identify which parts are not original in the repair estimate and should let the consumer look at the estimate before moving forward with the repair. State Farm may suggest the use of after-market parts but advises the ultimate choice remains with the customer **EXHIBIT (bus22a06)**. If State Farm is already doing this, why is it opposing the bill? State Farm has the procedure already in place within its repair program; in fact, it has started a "Service First" program where if State Farm customers want their car repaired at a certain repair shop and if that repair shop is on their list of recommended shops, the customer doesn't even have to come to the claims office, but will go straight to the repair facility. State Farm has that policy because of service to their customers and because it expedites the repair process. **Senate Bill 263** would require our insured to take that side trip to the insurer's place to sign a permission form. Also, the sponsor indicated the customer's signature might have to be on the estimate; however, in some instances our consumers aren't required to sign the estimate.

The sum and substance of these amendments is to require all insurers in Montana to give written notice to their insureds that their insured may insist on the use of original parts to repair their vehicle. One amendment not listed would read: Page 1, Line 25, after "vehicle" delete "that is 4 years old or newer". The effect of that is to allow the consumer to request original parts, irrespective of the age of their vehicle. I strongly urge the Committee to consider these amendments.

Jack Gregg, Montana Collision Repair Specialists. We stand as an opponent of **SB 263** because it doesn't require the consent of the consumer to use any parts on his vehicle. We request the consumer must first be notified and the parts explained as to what they are. Also, they must put their signature on the line which would say they agreed. We find the bill is seriously flawed, along with the amendments, because it limits to an arbitrary year as to when the vehicle should have OEM parts and when it should have after-market parts. We feel that in all cases, safety of the repair is an issue. We appreciate **SEN. HOLDEN** and his bringing the bill for discussion and we ask the Committee to withhold any action until the bill in the House comes before you.

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Gary Harris, Auto Body Specialists, Inc. We oppose the bill but commend **SEN. HOLDEN** for bringing it forth because it has some

good features. I want to testify on behalf of my customers and let you hear what I hear every day. Customers choose their collision repair shops for repair purposes and ask us to take care of their babies. So we sit down and generate a repair bid which we give to the customer. The customer submits it to the insurance company who sends it to an auditor. The auditor takes the repair bid and tries to find ways to cut the bid in order to save money. Their job is to cut at least \$60 from that repair bid. With today's computer technology, hidden costs are eliminated so they pick on after-market parts or non-OEM sheet metal parts. Our industry has a lot of replacement parts and we are not against after-market parts. "After-market sheet metal parts" bring some real problems because they're not safe, not quality, don't fit; in fact, the repair industry has a problem trying to make them fit. Also, the customer looks at the car, notices some flaws in the repair work because of the above, and brings the car back. The insurance company doesn't really get the feel of the customer when that happens. We need to have this bill worded properly so the insurance companies don't take advantage of the guys "in the trenches"; in other words, consumer choice and they have full knowledge of what's going onto their car, we as shop owners have no problem changing parts. We all lose when non-quality parts are used on cars. The insurance company is the only winner. It just breaks my heart when we see a car on which we have been told to put an after-market part, and the customer says he's tired of battling with them -- he just want his car fixed. I just hope that car doesn't come back so I have to take the parts away and know someone inside that car got hurt.

Matt McDonnell, Montana Collision Repair Specialists. I'm here today to educate you on what after-market parts are. I brought some parts which we ordered from after-market and OEM sources and all are certified by two of the best certifications. There's nothing the same in these parts. I'm going to dab some water on the OEM fender and on the CAPA certified fender and will leave it for a bit. These fenders are for a 1993 GM pickup -- the overall length of the after-market fender is 3/8" longer and in order for us to make the fender fit, we either have to bend the hood or alter the fenders. The GM parts fit 99.9% of the time while the after-market parts don't. I am against using the after-market parts because of the quality and safety of putting them on vehicles. I will now draw your attention to the fenders -- the OEM fender will not rust in an eight-hour period but the after-market part will be rusted in a matter of minutes.

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Tom Daubert, Lobbyist, Montana Collision Repair Specialists. I have a copy of "Consumer Reports" which will be available to you

EXHIBIT (bus22a07). It was fascinating to note the bill didn't include bumpers, which according to this article was one of the most replaced articles and certainly one of the most important safety aspects. **Mr. Randash** was correct **SB 263** implied if an after-market part was certified by CAPA or DOT, it was acceptable. The actual car body parts displayed show the part can be CAPA - certified and still be substantially inferior and this article illuminates that in a number of ways. The CAPA certified parts have no crash testing so the whole safety issue is not thoroughly considered as it is with the original parts. The "4 years and newer" feature has been addressed but we can all agree if your car is 4.1 years old, you have the same right as someone whose vehicle was 3.9 years old to know in advance how that investment is repaired. **SEN. HOLDEN** explained what he meant in Section 2, Parts 1-2, but it is confusing to me because it sounds like there are two (2) kinds of consent -- four years and younger and those which weren't. I don't think written permission is necessarily the same as informed consent, which means the insureds are fully informed as to their choices and consequences. **SB 263** gets into everyone's lives because we all have and need insurance but it doesn't help unless your car is younger than four years old. Perhaps it would be a good idea to hold onto this bill until the one from the House gets here and then decide.

Bruce Spees, NAPA Distribution Center, Billings. We are opposed to the bill because it paints a wide brush over the after-market industry because it didn't clearly define which parts belonged to the after-market industry; however, it gives an advantage to the original equipment manufacturer which they cannot earn on a level playing field. We ask you to consider the after-market industry and the people who work there who do such a good job of presenting quality parts -- we have spent 75 years building a reputation for quality parts. Many of them are supplied by the same manufacturers and we think the bill ties us to parts like those displayed here. We don't want to be associated with them and yet it seems we'll be penalized. We ask you to vote against this bill.

Frank Cote, Deputy Insurance Commissioner. I reluctantly oppose this bill because I want to commend **SEN. RIC HOLDEN** for taking this concept and trying to move it forward. We have a bill in the House at the State Auditor's request and think most of its problems are worked through. It solves some additional problems not addressed in **SB 263** and if **SEN. HOLDEN** wants to amend his bill to include their bill they were fine with that. I think the article in "Consumer Reports" should be read by all of you and can't understand, after reading this article, why insurers

require after-market parts. It seems using after-market parts would drive up the cost of insurance.

Donna Fastenau, Hank's Body Shop, Billings. I have copies of **EXHIBIT (bus22a08)** for each Committee member.

Jacqueline Ayers, Montana Collision Repair Specialist, Billings.

I'm the mother of a two- and six-year-old so safety is a very large factor in our industry. I have an article I got off the Internet that briefly describes imitation parts. [She showed the Committee the diagrams, etc., from the article and explained their meanings]. I strongly oppose the bill because it states a limit of four (4) years and we as consumers have a right to know about our safety. It also asks for permission rather than informed consent, which is very important. I think every shop owner gets informed consent when they do the repairs.

Gene Dziza, Flathead Collision Repair Association. We are in opposition to the bill but are in favor of seeing after-market parts legislation; in fact, everyone in this room agrees this type of legislation is long overdue. Some of the concerns I have are: (1) Standard warranty for cars is three or four years; however, sheet metal warranty extends to seven years -- unlimited mileage rust-through warranty; (2) I don't want a rechromed bumper on my one-year-old truck and I'm tired of fitting an after-market grille into a '97 Chevy Suburban Silverado. We need this type of legislation.

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John Metropolous, Farmers Insurance Group. I reluctantly oppose this bill because the issue the insurance contract from which the insurer is insured allows for discretion on both their parts to decide whether it's important enough for that vehicle to put the higher priced part on. Farmers Insurance asks its customers whether they want an original or after-market part. After-market parts are much like generic drugs -- they're much cheaper and most of the time the quality is the same; however, sometimes they're not and the consumer has to make the decision whether it's worth paying more for. If you force insurers to use original parts the price of collision insurance will go up, the ability of consumers to get the insurance will go down, and more people will have cars which will not be well-repaired. We are for disclosure and information on consumer parts but we don't recommend insurers are required to put on and pay for original parts because it's far too expensive. Interstate commerce is a federal issue so Congress needs to require crash testing so after-market parts become safer but that's an issue we can't

address. If we go too far in this bill, we can drive the price of these repair parts beyond reach.

Keith Koch, Jax Auto Body & Paint. I stand in opposition.

Mark Brodie, Ron's Auto Refinishers. I oppose the bill.

Jacqueline Lenmark, American Insurance Association. We oppose the legislation but support the amendments brought by the other insurance association.

Questions from Committee Members and Responses:

SEN. BEA MCCARTHY referred to the actual auto body parts brought by **Matt McDonnell** and asked the difference between the finishes. **Mr. McDonnell** said the OEM part had a corrosion protection while the after-market part did not -- it has a cheap primer and coating and the longer the water sits on it, the more it will rust. Rock chips take the primer surface off.

SEN. MCCARTHY asked about the headlights. **Matt McDonnell** said there was a huge difference between the OEM and after-market -- on the after-market part the color of the lens was different, the light didn't shine as brightly or as far, it was loose, the headlight would vibrate when the vehicle drove down the road and the moldings were loose and the surface was rough. Price difference was about \$120 on the OEM and \$100 on the after-market.

SEN. MCCARTHY asked if the after-market parts had to be "squeezed" in order to make them fit. **Mr. McDonnell** said sometimes that happened and sometimes the gap between parts was too big because the after-market part was too small.

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SEN. MCCARTHY said her new car was financed for five (5) years instead of four (4) and wondered why the cut-off was four (4) years. **SEN. RIC HOLDEN** said the diverse groups in the room had a lot of different interests and the line had to be drawn -- should all after-market parts be eliminated or figure out a balance. It's a public policy decision you're going to have to make.

SEN. MCCARTHY said she was discriminated against because she was driving a 1994 vehicle and wondered if the bill couldn't be amended to help people in that category. **SEN. HOLDEN** said if all OEM parts were used, the insurance premiums would be too high.

SEN. MCCARTHY said she was understanding the price of her insurance premiums was determined by the repair bill of her car. What if she never had an accident? **SEN. RIC HOLDEN** said it was still based on the repairs of all the people in the risk pool; therefore, if all the people in that pool used OEM repair parts, the premium would be higher, even though you never had an accident. It really hurts the low income people who are trying to afford insurance.

SEN. MCCARTHY asked the same thing of **Frank Cote** who said the bill with amendments that was before the House committee didn't require the use of new manufactured parts; in fact, you could use recycled manufactured parts which were of the same quality you need. I have to believe the cost of a salvaged fender is less than or similar to that of an after-market part. We're not trying to drive up the cost of insurance but are trying to ensure the safety and security of people who are driving their vehicles is taken care of. That's why we think the House bill does a better job. It also doesn't stop you from allowing the insurance company to put after-market parts on the car -- you just have to agree that's what you want on there.

SEN. MCCARTHY asked if all rates were based on this formula. **Frank Cote** said insurance companies priced differently but as a general rule, the losses the insurance company pays out are calculated into their premiums for the following year(s).

SEN. MCCARTHY asked **Donna Fastenau** if she made more money on one part as opposed to another. **Ms. Fastenau** said they made approximately 25% on the OEM parts and approximately 35% on the after-market ones.

SEN. MCCARTHY asked why bumpers were not included in the bill.

SEN. HOLDEN said it was a part commonly involved in auto accidents and if OEM parts were required on all bumper repairs, the cost of insurance would certainly be driven up.

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SEN. JOHN HERTEL asked if the bill would change the process of making the estimates. **Gary Harris** said it would if he originally generated the estimate, it would not change; however, if it were sent somewhere else (some insurance companies require a copy of the estimate which they send to an auditing firm) it could be changed in order to cut costs.

SEN. HERTEL asked the sponsor if he was willing to work out the differences some of the opponents had or if he was interested only in looking at his bill only as it had been presented. **SEN.**

RIC HOLDEN said the amendments by State Farm watered down the bill to make it nothing more than a notification bill -- it would not prohibit the use of after-market parts. We already notify a customer any time an after-market part will be used.

SEN. HERTEL asked the sponsor if he was intending to mold his bill with the House bill. **SEN. HOLDEN** said there had been a flurry of amendments and currently nobody knows what the bill looks like; in fact, he talked to Mark O'Keefe and it seems it's simply a notification bill -- it didn't strictly prohibit the use of after-market parts, which is exactly what the insurance industry wants. That's not the intent of his legislation; rather, his intent was to strictly prohibit the use of after-market parts on cars four (4) years or newer, unless otherwise agreed to by the customer. These people want the bill held up because they didn't want it to make transmittal so they wouldn't have to deal with this issue. The Commissioner told me last night he didn't think we could get a bill through the legislature which would prohibit the use of after-market parts, which was why he took a stand on the notification process. I told him it was time the people of Montana established public policy in regard to parts on newer vehicles.

SEN. HERTEL asked if he opposed the amendments and **SEN. HOLDEN** said he opposed those from State Farm.

Closing by Sponsor:

SEN. RIC HOLDEN said the Insurance Commissioner's office had a thick book which listed after-market parts and requirements insurers are supposed to do by rule. That book tells insurers and insurance representatives we are to tell a customer when an after-market part is going to be used. Any insurance adjuster who does not identify that on the estimate is not above-board, i.e. the consent is already in rule. **Senate Bill 263** is entirely about consent because it tells the insurance company you have to tell the customer when you're going to suggest or put the after-market part on the vehicle. The amendments from State Farm talk about choice but the sad story is the insurance company tells the customers they have the choice, but the insurance won't pay for an OEM part. The body shops that opposed the bill were probably the best reason they should support it -- they're against the after-market parts. If they support the bill that requires notification only, insurance companies aren't stopped from putting those parts on; it just says the companies have to notify the customers what they're going to do. We need to move this bill forward rapidly so it can meet the House bill and the two can get melded together. In no way, would I be willing to

compromise the consumers' interest in this legislation by not prohibiting the use of after-market parts on certain vehicles.

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HEARING ON SB 272

Sponsor: SENATOR VICKI COCCHIARELLA, SD 32, MISSOULA

Proponents: Bill Kennedy, Pubic Service Commissioner

Opponents: Jim Oppedahl, Gambling Control, Dept. of Justice

Opening Statement by Sponsor:

SEN. VICKI COCCHIARELLA, SD 32, Missoula. This bill does three things -- creates jobs, jobs, jobs. The bill has nothing to do with the expansion of gambling in Montana, but has everything to do with allowing Montanans to create a market to sell products in those markets in a legal way to jurisdictions where those gaming devices are legal. It does nothing more than that. The Department of Justice has a substantial amendment to ensure nobody in Montana was getting into trouble who might participate in the distribution of illegal gaming devices -- illegal only in Montana but legal outside our jurisdiction. In Montana, it currently is legal to have a legal manufacturer's license so machines can be made and marketed in other places; however, the machines could not be brought in from outside Montana for repair, display or sale. This bill would create jobs that would pay anywhere from \$10-\$15 per hour. The amendments track all the issues of the Justice Department so they have good tracking -- if there is a legal problem, the law provides for criminal liability as a felony -- fine of up to \$50,000 or imprisonment of not more than 10 years, or both, and lose your license. Again, **SB 272** is about creating jobs in Montana. I have a copy of the grey bill **EXHIBIT (bus22a09)**.

Proponents' Testimony:

Bill Kennedy, Yellowstone County Commissioner. I talked with the other two (2) commissioners on this bill and they are not in support of expansion of gambling; however, we are in support of business expansion and jobs in our community. We are not in support of the use of these machines, but support the distribution and revenue it would create. We support **SB 272**.

Opponents' Testimony:

Jim Oppendahl, Department of Justice. We oppose **SB 272** as drafted, but as amended, we are neutral. We are concerned about the regulatory responsibilities and potential fiscal impact. The amendments may need some tweaking but they are our best effort to corral this activity. We have had about 10 years experience of dealing with the licensing scheme in Montana. There are 15 manufacturers of gambling devices in Montana who deal with legal machines and six (6) manufacturers of illegal devices (those which are legal somewhere else but not in Montana). There are 21 licensed distributors in Montana who are limited to selling Montana legal devices to Montana legal licensees. The regulatory scheme in Montana for gambling devices and machines is to make them legal in specific places -- a license is required for manufacture and distribution. This is regulated at the state level and amongst ourselves; in fact, illegal antique slot machines can be displayed but they are illegal for the player. Other illegal devices have to be permanently disabled if they're to be displayed. Our concern is this kind of bill opens the door and it should be done very carefully. Montana's scheme is designed to protect the legal gambling activities, to protect the public and to limit the extent and kind of exposure the state has to legal devices. We have a relatively leak-proof system in terms of licensed manufacturers and distributors which prevents illegal devices from leaking back into those establishments where gambling is legal. The amendments attempt to limit as much as possible the allowed activities in this category.

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The amendments will clarify the bill, which will be different from ambiguous language in some states. Historically, gambling has not been legal in the United States but it sort of evolved in a number of states; in fact, there are some states that don't regulate it at all. As a regulatory body, we don't want to chase people because of ambiguous laws; we want to limit the activity to the United States because of the enforcement issue.

Questions from Committee Members and Responses:

SEN. BEA MCCARTHY asked about the \$1,000 fee and the possibility of it going to the voters because of CI-75. She wondered if this bill could set up a licensing process, rather than a fee. **Jim Oppendahl** said they needed specific legislative authority to have a separate licensee which would be easier to deal with than simply amending it so any existing distributor would receive pre-endorsement. That would expand it beyond what they're comfortable with and he wasn't sure what needed to be done legally in terms of drafting this to address CI-75. Even if you attach it as some rule-making authority and charge any kind of

fee, there will have to be background checks and extensive related investigation -- all has been paid for by the applicant, not the General Fund or other licensees.

SEN. HERTEL asked how many people would be required in the Department. **Mr. Oppendahl** said at this point he didn't know -- they would need a fiscal note in order to make assumptions. It was his assumption if there were any kind of regulatory authority it would take additional resources -- they currently were stretched in terms of current resources. This activity will grow over time and will take Department resources to enforce it.

SEN. MCCARTHY said these people had already gone through the investigative procedure of the Department so why would it need to be redone. **Mr. Oppendahl** said it would be his position that investigation was done for a specific activity but this was a substantial change in that activity. They would like to see an amendment in terms of the licensing process to show from where the financing was coming and who was going to be involved in the activity.

SEN. MCCARTHY restated how all the investigation had already been done when a person first applied for license and wondered what more could be done. **Jim Oppendahl** said the background investigation was done for a specific purpose and when we change the purpose there is another individual license. Anytime anyone makes an amendment, adds additional financing, etc., the licenses are amended and approval needs to be sought. It's a highly regulated activity.

SEN. MCCARTHY suggested the Department was trying to put up unneeded obstacles because it already had all the information it needed -- what more was there. **Mr. Oppendahl** said the investigation was done for a specific kind of license and it was their position this was a different kind of license with substantially different economic activity and went beyond what was regulated in Montana in the past.

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SEN. HERTEL asked if the federal government stepped in and checked when the devices were made and sold to other jurisdictions. **Mr. Oppendahl** said the bill and amendments weren't about manufacturing these devices here in Montana; rather, it was about bringing manufactured devices in from other jurisdictions to be stored, demonstrated or sold. There were, however, federal laws related to gambling but when they were put

together with state regulation, the state would be the stronger element in any regulatory activity.

SEN. HERTEL asked if once the devices were moved to another jurisdiction, would the Department have any more involvement.

Mr. Oppendahl said it wouldn't because state law would take over.

SEN. HERTEL asked the sponsor what she'd like to do. **SEN. VICKI COCCHIARELLA** said she would like a little more time to consider the amendments but she generally agree with what **Mr. Oppendahl** gave the Committee. She was concerned about CI-75 because at this point in time there is only one distributor who is interested in pursuing this, which certainly is not worth a \$38,000 ballot issue. There is no reason at this point to expand; rather, to make an addendum or amendment to a distributor's license where they've already been investigated. She needed to find out what those concerns were and what the other investigations may entail. If the Committee amended her bill and incorporated this, there may have something that will work.

Closing By Sponsor:

SEN. VICKI COCCHIARELLA. Senate Bill 272 is a jobs bill and right now only one business is pursuing this activity but hopefully there will be more. Anything we can do to create jobs that doesn't add to the bureaucracy is the intention of the bill. I have a copy of a letter from Jerry Thomas, executive director of Big Sky Economic Development, who is also supporting this legislation **EXHIBIT (bus22a10)**.

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(SEN. JOHN HERTEL relinquished the chair to **SEN. BEA MCCARTHY** while he presented **SB 117)**.

HEARING ON SB 227

Sponsor: SENATOR JOHN HERTEL, SD 47, MOORE

Proponents: Mike Strand, Executive Director,
Geoffrey Feiss, MT Telecommunications Assoc.
Bob Rowe, Public Service Commissioner
Joan Mandeville, Clark Fork Telecommunications
Barbara Ranf, U.S. West
Mark Baker, AT&T

Opponents: None

Opening Statement by Sponsor:

SENATOR JOHN HERTEL, SD 47, MOORE. This bill changes the size of a small local telephone company. The number of lines served would be increased from 5,000 to 12,000; yet, qualify for streamlined regulation under existing statute. Current statute that defines regulations for small providers was passed 11 or 12 years ago and it was determined at that time the PSC didn't need all this information for very small companies that served less than 5,000 lines. Since then, one company has grown to barely exceed the 5,000-line limit and four (4) others have been created, due to partial sales from much larger companies; the newly-created companies serve around 7-8,000 members or lines. Most regulated companies currently must file a massive volume of documents when seeking to change their rates, but when the legislation was passed, they were allowed to file brief summaries when they wanted to change their rates. This bill would enable the small providers the same regulations as established 11 years ago. Classification of these companies as small providers will reduce the regulatory paperwork and cause the cost of these small rural companies to be less. I want to emphasize the PSC will regulate them and may continue to investigate their rates at any time so consumers will be protected. Also, affected customers can petition the PSC for review of rate changes.

Proponents' Testimony:

Mike Strand, Montana Telecommunications Systems, read his written testimony **EXHIBIT (bus22a11)**.

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Geoffrey Feiss, Montana Telecommunications Association, read his written testimony **EXHIBIT (bus22a12)** and explained amendments **EXHIBIT (bus22a13)**.

{Tape : 2; Side : A; Approx. Time Counter : 24.3}

Bob Rowe, Public Service Commission (PSC). The PSC supports the amendments, specifically, increasing the access lines from 5,000 to 12,000 because it will provide the flexibility to all small carriers who don't have the in-house office support to do the more complete reporting and filing for rate increases. The Commission also doesn't oppose including reference to rate increases or decreases in the statute. The new section which concerns forbearance was originally drafted by the proponents who addressed all our concerns. Specifically, it makes clear the

applicant for forbearance must initiate the process by filing the application, it has a public interest test and it has a 90-day extension to the 90-day deadline for Commission action. This is important because quite often during any phase of the Commission, some party will request a continuance, which still gives us a tight turnaround but a little more flexibility. The Commission must determine that enforcement of a particular regulation from which forbearance was sought was not necessary to ensure just and reasonable rates to protect customers or promote public interest. This makes clear the applicant for forbearance has to think through his case and present it to the Commission.

Joan Mandeville, Clark Fork Telecommunications. Clark Fork was formed when we purchased nine exchanges from US West and we have about 7,800 access lines. A lot of my job functions today are geared toward doing operational types of work and in addition, I am the regulatory department. We really rely on Montana Telephone Association (MTA) to do most of our policy regulatory work and don't have any kind of significant staff to do ongoing rate changes which the Association does not do. We see this bill as a real benefit to us. Under agreements by the PSC, when we purchased those exchanges we have five years of basically no rate changes and we don't see that as changing much because things are stable right now. Some old US West rates didn't tailor well to small rural businesses and this bill would help us tailor some of our service offerings. We are looking at tailoring a service, which we haven't sold much of, to something that would work as a mid-rate data service for small businesses -- it needs to have a rate reduction. We think **SB 227** would help us with those tailoring functions, knowing they would go in on a streamlined basis and not take a lot of internal resources for something that we would never have a large customer base for. We support the bill and the amendments.

Barbara Ranf, US West. We support this bill because we understand the need for streamlined regulations for smaller companies. We had some concerns with some of the amendments that were going to be offered but they've been worked out. We hope you can support this bill.

Mark Baker, AT & T. We too support the bill as introduced and we are comfortable with the amendments at this point. If we do have any hesitation, we'll notify the Committee within 24 hours in writing to express our concerns.

Opponents' Testimony: None.

Questions from Committee Members and Responses: None.

{Tape : 2; Side : A; Approx. Time Counter : 32.2}

Closing by Sponsor:

SEN. JOHN HERTEL. In my own area, US West sold most of its rural holdings to rural telephone companies and now they are slightly over 5,000 lines. This bill will help them. There are others in this state and others will be added as time goes on. I will make sure the amendments that have been presented to you are all in agreement before we take executive action. We will allow them time to decipher them very carefully. This is a good bill for small business -- it gives small telephone companies more flexibility and enables them to do their business better. Consumers also have protection.

ADJOURNMENT

Adjournment: 11:30 A.M.

SEN. JOHN HERTEL, Chairman

MARY GAY WELLS, Secretary

JH/MGW

EXHIBIT (bus22aad)